Current Listing of the Claims

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

1. (Currently Amended) A device ~~for allowing lateral movement of~~to assist in the torquing of a suspended vehicle wheel ~~while preventing rotation of the suspended vehicle wheel~~, comprising:

a plurality of parallel upstanding margins laterally spaced apart from each other and each comprising an uppermost edge ascending generally concavely and defining a tire engaging interface, each of said uppermost edges further comprising scalloping defining a plurality of saw teeth each having an apex comprising said tire engaging interface and;~~.~~

one or more ground engaging base portions that are coupled to and/or part of the upstanding margins, and wherein the saw teeth engage the wheel to prevent rotation of the wheel and the ground engaging base portion is configured to allow lateral movement of the wheel.

2. (original) A device described in claim 1, each of said upstanding margins comprising a leading tip extending vertically from a basal edge to commencement of said ascending uppermost edge, each of said upstanding margins further comprising a trailing end extending vertically from said basal edge to conclusion of said ascending uppermost edge.

3. (original) A device described in claim 2 herein, further comprising means for providing transverse support between said upstanding margins.

4. (original) A device described in claim 3 herein, said transverse support means comprising at least one crosspiece structurally connecting said upstanding margins.

5. (original) A device described in claim 3 herein, said transverse support means comprising at least a first crosspiece structurally connecting said leading tips of said respective upstanding margins near said respective basal edges, and at least a second crosspiece structurally connecting said trailing edges of said respective upstanding margins near said respective uppermost edges.

6. (canceled)

7. (canceled)

8. (original) A device described in claim 3 herein, further comprising a concave ramp offset below said scalloping and structurally crossconnecting said upstanding margins.

9. (original) A device described in claim 1 herein, each of said pluralities of sawteeth ascending concavely and arranged to optimize said allowing lateral movement of a suspended vehicle wheel while preventing rotation of the suspended vehicle wheel.

10. (original) A device described in claim 8 herein, each of said sawteeth having said apex projecting in an orientation opposing the rotation direction of the tire tread surface.

11. (Currently Amended) A device described in claim 2 herein, further comprising means for providing supporting contact with substratum such that the device is adapted to move laterally.

12. (original) A device described in claim 11 herein, said means for providing supporting contact with substratum comprising a longitudinal reinforcing region above said respective basal edge.

13. (canceled)

14. (canceled)

15. (original) A device described in claim 3 herein, further comprising a portal sufficiently sized to allow insertion of the user's forefoot to facilitate placement beneath the suspended vehicle tire.

16. (original) A device described in claim 3 herein, further comprising a portal sufficiently sized to allow insertion of the user's forefoot to anchor said device to firmly prevent rotation of the suspended vehicle tire when in use.

17. (canceled)

18. (canceled)

19. (Currently Amended) A device for assisting in the torquing ~~allowing lateral movement of~~ a suspended vehicle wheel ~~while preventing rotation of the suspended vehicle wheel~~, comprising:

(a) a plurality of spaced apart parallel upstanding margins each comprising an uppermost edge ascending concavely from a leading tip to a trailing end and defining a tread engaging interface, said leading tip extending vertically from a basal edge to commencement of said ascending uppermost edge, said trailing end extending vertically from said basal edge to conclusion of said ascending uppermost edge, each of said uppermost edges further comprising scalloping defining a plurality of sawteeth each having an apex comprising said tire engaging interface, wherein when engaged, the plurality of parallel upstanding margins prevent rotation of the wheel but allow lateral movement of the wheel;

(b) each further comprising means for transversely supporting said upstanding margins, comprising a transverse support wall gusseted and extending perpendicularly to said upstanding margin and beneath said uppermost edge, said transverse wall further extending from near said uppermost edge near said trailing end vertically downward near said trailing end

and terminating near said basal edge near said trailing end but having an intermediate curvature defining an appendage support notch in said trailing end;

(c) further comprising means for transversely connecting said upstanding margins, comprising at least a first crossbolt extending through said transverse support walls at said leading tips of said respective upstanding margins near said respective basal edges, at least a second crossbolt extending through said transverse support walls at said respective leading tips near said respective uppermost edges, at least a third crossbolt extending through said transverse support walls at said trailing ends near said respective basal edges, and at least a fourth crossbolt extending through said transverse support walls at said trailing ends near said respective uppermost edges; and

(d) said upstanding margins comprising a cutout portal sufficiently sized to allow insertion of the user's forefoot to facilitate placement beneath the suspended vehicle tire.

20. (Cancelled)

21. (Canceled)

22. (original) A method of torquing lug nuts of a suspended vehicle wheel facilitating the seating of a vehicle wheel against the vehicle hub, comprising the steps of moving a device of claim 1 into engaging contact with the underside of the tire tread, and tightening lug nuts around the wheel while allowing said device freedom to ~~follow~~ allow the lateral motion of the wheel during the process of seating the wheel against the vehicle hub.

23. (Previously Presented) A device to assist in the torqueing of a suspended tire, comprising:

a tire engaging interface disposed on substantially parallel upstanding margins, the tire engaging interface adapted to resist only rotational movement of the suspended tire during a torqueing operation;

a basal edge adapted for lateral movement on an underlying substratum, and configured to support the upstanding margins.

24. (canceled)

25. (Previously Presented) The device of claim 23 wherein the basal edge is coated with a material to enhance sliding.

26. (Previously Presented) The device of claim 23 wherein the tire engaging surface is a friction enhancing surface selected from the group consisting of saw teeth, grip struts, and perforations.

27. (new) The device of claim 1, wherein the ground engaging base is defined by bottom edges of the plurality of parallel upstanding margins.

Remarks

Claim Amendments

Claims 1-12, 15, 16, 19 and 22-26 are in the case. Applicant has cancelled claims 6, 7, 13, 14, 17, 18, 20, 21 and 24, and has added new claims 27.

Claim Rejections – 35 USC § 103

The Examiner has rejected the remaining claims as being unpatentable over Jicha, U.S. Patent No. 2,862,579 in view of Peterson, U.S. Patent No. 3,357,639. Applicant respectfully requests reconsideration and allowance based on the amendments and following remarks.

Since the issuance of the present office action, Applicant and the Examiner have had two discussions regarding the prior art and the rejections based on that art. Applicant appreciates the Examiner's indulgence.

A prima facie case of obviousness can be rebutted if the applicant can show that the art in any material respect teaches away from the claimed invention. *In re Haruna*, 249 F.3d 1327 (Fed. Cir. 2001). A reference may be considered to teach away when "a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant." *Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH*, 139 F.3d 877, 885 (Fed. Cir. 1998).

With this in mind, during the first discussion on the 4th of April, 2006, Applicant was under the impression that an understanding the references cited by the examiner was reached and they not render obvious the pending claims. In particular, Jicha was clearly distinguishable based on the fact that it expressly teaches away from allowing lateral movement of a vehicle tire. Applicant pointed out several portions of the primary reference that taught fixing the wheel chalk to the ground, which would thereby prohibit any such lateral movement. In particular, Jicha teaches including teeth 40 spaced along one or more edges of the foot plate "to *add to the gripping function* of [the] improved block assembly." Jicha, Col. 3, lines 53-59. In fact Jicha reiterates many times that movement is not only undesirable, but the device is expressly designed to prevent such lateral movement. For example, in distinguishing other devices, Jicha

emphasizes that "the foot plate [ ] is *anchored to the ground*." Col. 4, lines 5-11; *see also* lines 50-55 (discussing the teeth "tearing up of the road bed").

In addition to the explanation of how Jicha clearly differed from the present device, applicant proposed amendments to the claims that clarified the need for the base portion of the device to be able to move laterally. Accordingly, applicant submitted proposed amendments to the claims on April 7, 2006.

The Examiner also raised an additional reference, 3,065,827, that was not presented in the office action. Applicant considered the '827 reference, and, as set forth in the letter accompanying its proposed claim amendments on April 7, 2006, the '827 patent clearly does not teach many of the aspects of the present invention, including parallel upstanding margins with scalloped teeth and a base that is adapted to move laterally to allow the tire to properly seat on the hub of a vehicle during a torquing operation.

In a follow up call with the examiner regarding the proposed amendments, the examiner made the further suggestion that Applicant clarify that the claimed device were teeth were spaced apart. This is believed to have been accomplished by the amendments to the claims call for "*spaced apart* upstanding parallel margins."

As applicant has herein amended the claims consistent with the proposed amendments submitted on April 7, 2006, and in line with the examiner's recent suggestion, Applicant believes that the case is in a condition for allowance and respectfully requests allowance of the same.

To the extent that the specifics of the office action mailed January 24, 2006 were not addressed in the calls and/or accounted for in the amendments and discussions above, applicant will further comment on aspects of the rejection.

First, in the "Response to Arguments" portion of the office action, the examiner states that the requirement of lateral movement is merely and "intended use of the device" and thus Jicha need only be "capable of such usage." The statement made by the Examiner is believed to be addressed by the discussion above regarding Jicha's clear teaching that the chalk is not to move laterally, and it is teeth 40 that prevent such

lateral movement. In addition, however, applicant submits that allowing lateral movement is not simply an intended use, but rather a necessary component of a device that can be used to torques suspended tires. Indeed, if the device was not configured to move laterally, as is the case in Jicha and Peterson, then if the tire needed to move slightly in order to properly seat, such movement would be prevented.

Applicant also submits that the examiner's statement supporting the rejection of the claims does not meet the threshold requirements, *i.e.* established a prima facie case to sustain a rejection based on obviousness. *MPEP 706.02(j)*. Specifically, the examiner does not provide any explanation why one of skill in the art would have been motivated to make any such modification to the cited references or combine such references. *Id.* The teaching or suggestion to make the claimed combination must be found in the prior art, and not based on applicant's disclosure or the use of hind sight. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). In light of the teachings of Jicha in particular, it is clear that it cannot be used to sustain a rejection on the grounds of obviousness.

Further, applicant notes that the examiner did not address the objective evidence of non-obviousness that was filed with the prior office action response. Applicant respectfully requests that the examiner acknowledge the existence of the evidence and, should another rejection be forthcoming, explain why such evidence is not considered to rebut such a finding.